

DEPARTMENT OF SOCIAL SERVICES
744 P Street, Sacramento, CA 95814



January 23, 1996

ALL-COUNTY LETTER NO. 96-02

Reason for this Transmittal

- | | |
|-------------------------------------|---|
| <input checked="" type="checkbox"/> | State Law Change |
| <input checked="" type="checkbox"/> | Federal Law or Regulation Change |
| <input type="checkbox"/> | Court Order or Settlement Agreement |
| <input type="checkbox"/> | Clarification Requested by One or More Counties |
| <input type="checkbox"/> | Initiated by CDSS |

TO: ALL COUNTY WELFARE DIRECTORS
ALL GAIN COORDINATORS

SUBJECT: IMPLEMENTATION OF GAIN DISPLACEMENT GRIEVANCE
REGULATIONS

This is to assist counties in the implementation of displacement grievance regulations which took effect October 14, 1995. These regulations implement provisions of Senate Bill (SB) 689, Chapter 1111, Statutes of 1991 and Federal requirements at 45 CFR 251.4. The regulations establish a three-fold grievance process for regular employees who believe they have been displaced by Greater Avenues for Independence (GAIN) participants. The regulations further provide that contracts or agreements for Pre-employment Preparation (PREP), on-the-job-training (OJT) or any activity funded by grant diversion shall describe the displacement grievance process defined in MPP Section 42-731. Further, the regulations require that affected employers or training providers ensure that labor unions and nonunion employees are notified that GAIN participants are working or otherwise participating at specified work locations and that employees have the right to grieve displacement by such participants.

The following documents are enclosed to assist counties in complying with displacement grievance requirements:

- Displacement grievance regulations including those governing employer contracts (Attachment I);
- Questions and answers for use by county staff (Attachment II); and
- Poster language for use by employers in notifying nonunion employees of their right to grieve displacement by GAIN participants (Attachment III).

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If you have questions regarding this letter, please call
your Employment Operations analyst at (916) 657-3403.

A handwritten signature in cursive script, reading "Bruce Wagstaff".

BRUCE WAGSTAFF
Deputy Director
Welfare Programs Division

Enclosures

c: CWDA

Adopt Section 42-731 to read:

42-731 Employee Displacement Grievance Process

42-731

The following grievance process shall be used to resolve the complaints of regular employees or their representatives who believe assignment of a GAIN participant to a preemployment preparation (PREP), on-the-job training (OJT), or grant diversion-funded component violates any of the displacement provisions at Manual of Policies and Procedures (MPP) Sections 42-730.13, 42-730.329, or 42-730.418, as applicable. All displacement complaints shall be in written form and shall include the full name, address (if any), and telephone number (if any) of the alleged displaced employee, the full name and address of the employer against whom the complaint is being filed, a clear and concise statement of the facts concerning the alleged displacement, including pertinent dates, and a statement that the complaint has been signed under penalty of perjury.

.1 Informal Resolution

.11 Upon receipt of a written complaint by the employee or employee's representative, the CWD shall contact both the complainant and affected employer and attempt to informally resolve the complaint.

.12 The period for informal resolution shall begin on the date the complaint is received by the CWD and shall not exceed ten calendar days.

.121 Nothing in this section shall prohibit informal resolution of the complaint at any time during the displacement grievance process.

.13 Following its efforts to informally resolve the complaint, the CWD shall send a letter informing the complainant of the following:

.131 The employer's response to the complaint, including any actions the employer is willing to take toward informal resolution.

.132 The right to request a formal hearing as specified in Section 42-731.21 if the complainant is dissatisfied with the employer's informal response.

.133 The procedures for filing a formal hearing including the address to which a request for hearing should be sent.

.134 The time limit for filing a request for formal hearing as specified in Section 42-731.211.

.14 The CWD shall send the letter required by Section 42-731.13 no later than the tenth calendar day from the date the complaint was received by the county.

.141 Copies of the letter shall be sent to the affected employer.

.2 Formal Hearing

.21 If the complaint cannot be informally resolved, the complainant may request a formal hearing.

.211 A written request for formal hearing must be filed no later than ten calendar days following the employee's receipt of the letter required by Section 42-731.13.

(a) The date postmarked on the hearing request shall be considered the date of its filing.

.22 Formal hearings shall be conducted by the California Department of Social Services (CDSS), Administrative Adjudications Division.

.23 The CDSS, Office of the Chief Administrative Law Judge shall inform the complainant and affected employer in writing of the date, time and location of the hearing and of the opportunity to present evidence, bring witnesses, cross-examine witnesses, and bring or send an authorized representative.

.231 An authorized representative is defined as an individual or organization that has been authorized by the complainant or affected employer to act on behalf of the complainant or affected employer in any and all aspects of the formal hearing. An authorized representative may include legal counsel, a relative, friend, or other spokesperson.

.232 A party who wishes to submit a document into evidence must provide a copy of it, free of charge, to the other party.

.233 The Administrative Law Judge may not discuss the merits of a pending state hearing with one party outside the presence of the other party.

.24 Except as specified in this section, the following provisions of MPP, Division 22 shall apply to formal hearings:

.241 Section 22-010 relating to authorized representatives.

(a) Notwithstanding the provisions of Section 22-010, both the complainant and affected employer may bring or send an authorized representative.

.242 Except as specified below, Section 22-049 relating to general rules and procedures at the hearing.

(a) To the extent that Section 22-049.11 refers to rehearings, it shall not apply.

(b) Sections 22-049.52 and 22-049.532, and any references to Section 22-049.532, shall not apply.

- (c) Sections 22-049.8 and 22-049.9 shall not apply.
 - (d) To the extent the provisions of Section 22-049 apply to formal hearings, all references to "claimant" and "county" shall be deemed to refer to "complainant" and "affected employer," respectively.
- .243 Section 22-050 relating to evidence.
 - (a) Requirements at Section 22-050.21 shall not apply.
- .244 Section 22-053 relating to postponements and continuances for additional evidence.
 - (a) Section 22-053.11 shall not apply.
 - (b) Notwithstanding the time parameters identified in Sections 22-053.1 and 22-053.2, the time limit set forth in Section 42-731.25 shall apply.
 - (c) To the extent that the provisions of Section 22-053 apply to formal hearings, all references to "claimant" and "county" in such regulations shall be deemed to refer to "complainant" and "affected employer," respectively.
- .245 Sections 22-061.1, .3, and .4 relating to submission and adoption of proposed decisions.
- .246 Section 22-062 relating to action by the Director.
 - (a) Notwithstanding the time limits for director action specified in Section 22-062.2, requirements for issuance of a hearing decision at Section 42-731.25 shall apply.
- .25 A written hearing decision shall be issued within 90 calendar days of the date the complaint was received by the county.
- .26 Copies of the written decision shall be sent to all affected parties. The decision shall include:
 - .261 A statement identifying the right to federal appeal of the hearing decision as specified in Section 42-731.31.
 - .262 The address and instructions for filing a federal appeal.
 - .263 The time limit within which the appeal must be filed as specified in Section 42-731.32.
 - .264 A listing of the required appeal contents as specified in Section 42-731.33.

- .27 When a hearing decision upholds the displacement complaint, the decision shall:
- .271 Require termination of the assignment which brought about the complaint and any other assignments which have caused the displacement of regular employees.
- .272 Identify those actions which shall be taken to remedy the displacement in accordance with Section 42-731.4.

.3 Federal Appeal

- .31 Any dissatisfied party may appeal the formal hearing decision to the United States Department of Labor.
- .32 The appeal must be filed within 20 calendar days of the appellant's receipt of the written decision.
- .33 The appeal shall contain the following:
- .331 The appellant's full name, address and telephone number.
- .332 The provisions of the Social Security Act, federal regulations, or state regulations believed to have been violated.
- .333 A copy of the original complaint filed with the CWD.
- .334 A copy of the formal hearing decision regarding the complaint being appealed.
- .34 The state shall file the entire administrative record of the matter under appeal with the United States Department of Labor within 30 calendar days of that Department's request for this information.

.4 Remedies

- .41 Remedies for displaced employees shall include reinstatement, back pay, and/or back benefits from the affected employer.

.5 Union Grievance

- .51 Any grievance procedure that is part of a collective bargaining agreement between the employer and labor union representing the dissatisfied employee shall be used in lieu of the process described in Section 42-731.

Authority Cited: Sections 10553, 10554, and 10604, Welfare and Institutions Code.

Reference: Sections 11324.7 and 11327.8(d) and (e), Welfare and Institutions Code; and 45 CFR 251.4.

Amend Section 42-740.1 to read:

42-740 CONTRACTS/AGREEMENTS FOR GAIN JOB, TRAINING AND
EDUCATION SERVICES

42-740

.1 Contracts/agreements between the CWD and providers of job, training or education services, including employers providing PREP, shall include specific criteria as follows: (Continued)

.19 Contracts/agreements for PREP, OJT, or any activity funded by grant diversion shall identify the displacement grievance process defined in MPP Section 42-731. In addition, such contracts/agreements shall specify that the employer or training provider shall either:

.191 Notify the appropriate labor union of the use of GAIN participants in any location or work activity controlled by an employer and covered by a collective bargaining agreement between the employer and a union as well as the right of union employees to grieve displacement by GAIN participants; or

.192 Notify nonunion employees of the use of GAIN participants and of the grievance process described in Section 42-731.

(a) Display of a poster shall satisfy this requirement.

(1) The poster required by Section 42-740.192(a) shall not specifically identify any GAIN participant.
(Continued)

Authority Cited: Sections 10553, ~~and~~ 10554, and 10604, Welfare and Institutions Code.

Reference: Sections 11322.8(a), 11324.5, 11328.2(c), 11328.6(a), Welfare and Institutions Code, AB 312, Chapter 1568, Statutes of 1990; 45 CFR 250.1, 45 CFR 250.61(b) and (c), and 45 CFR 250.72(c) and (d).

Displacement Grievance Questions and Answers

1. Do the displacement grievance regulations, including employee notification requirements, apply when an employee believes he has been displaced by a participant in the Alternative Work Experience (AWEX) component?

Yes. All displacement grievance requirements apply as AWEX regulations specify that the displacement prohibitions contained in MPP Section 42-730.329 apply to AWEX assignments.

2. What are the responsibilities of the County Welfare Department (CWD) within the displacement grievance process? Does the CWD have discretion in determining which county office(s) should meet these responsibilities?

The CWD must ensure that all contracts for PREP, OJT, AWEX, or any activity funded by grant diversion describe the displacement grievance process. Employers and service providers must clearly understand their need to ensure that union and nonunion employees are notified of their right to grieve displacement by GAIN participants as specified in MPP Section 42-740.19.

Upon receipt of a written complaint, the CWD must contact both the complainant and employer and attempt to informally resolve the complaint. Following these attempts at informal resolution, the CWD must send a letter informing the complainant of the employer's response to the complaint, the complainant's right to request a formal hearing, and the procedures and time limits for requesting a formal hearing. A copy of this letter must be sent to the affected employer.

The CWD may select the office(s) it thinks most appropriate to perform the tasks discussed above. More than one county office may be involved in the grievance process provided the time frames required by MPP Section 42-731.12 and .14 are met.

3. When the letter informing a complainant of the employer's response to the complaint is issued in accordance with MPP Section 42-731.13, where should the complainant be directed to send a request for formal hearing if he/she wishes to pursue the complaint?

A request for formal hearing should be sent to:

California Department of Social Services
Administrative Adjudications Division
State Hearings Support Section
744 P Street, M.S. 19-37
Sacramento, CA 95814

4. Must existing contracts for PREP, OJT, AWEX, or grant diversion-funded activities be amended to identify the displacement grievance process and specify that employers must notify unions or nonunion employees of the use of and right to grieve displacement by GAIN participants? If so, by when must these contracts be amended?

Existing contracts for PREP, AWEX, OJT, or any activity funded by grant diversion must be amended as soon as administratively possible, but no later than when a new participant is placed with the employer. Employers must then take necessary steps to notify labor unions and nonunion employees in accordance with MPP Section 42-740.19.

To assist counties and employers in complying with the contract requirements at MPP Section 42-740.19, the Department has developed the enclosed poster language for use by employers in notifying nonunion employees of the use of GAIN participants and of the displacement grievance process.

Language for Displacement Grievance Poster

Notice To Employees

Your employer has included Greater Avenues for Independence (GAIN) program participants in the workforce at this location. State law prohibits employers from using GAIN participants in a way that will cause other employees to lose their job, to be laid off, or to have their work hours reduced, including overtime hours currently being worked. An employer cannot place GAIN participants into jobs which would otherwise be promotional opportunities for existing employees, or into vacant positions which are not newly created jobs. Finally, an employer must not violate any personnel rules when including a GAIN participant in his or her workforce.

If you believe your employer has violated any of the rules discussed above and this has led to problems with your job, you may file a complaint with the county. The county will work with your employer to try and resolve the problem. If the problem cannot be worked out, you may request a hearing with the State.

A complaint against your employer must be in writing and must contain the following information:

- Your full name, your address (if you have one), and your telephone number (if you have one);
- The full name and address of your employer;
- A clear and brief statement of the facts, including important dates, which have led you to file this complaint;
- A statement that this complaint has been filed under penalty of perjury.

Send your complaint to this address: